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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,343	10/15/2001	J Eric Mowat	67272-8049.US01	5512
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Perkins Coie LLP P.O. Box 1208 Seattle, WA 98111-1208			EXAMINER BILGRAMI, ASGHAR H	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/981,343	Applicant(s) MOWAT, J ERIC	
	Examiner ASGHAR BILGRAMI	Art Unit 2443	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6,8-19,21-37,39-49,51,52 and 57-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,8-19,21-37,39-49,51,52 and 57-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/28/2009 has been entered.

Oath/Declaration

2. The applicant made a declaration that J Eric Mowat is the inventor of the patent application (09/981343) that is being examined. The applicant is attempting to show conception of the invention prior to June-26-2001 (the Earliest Effective Date of the O'Rourke reference) coupled with reduction to practice from just prior to the reference date until filing of this application in October-2000.

I. Conception

3. *The affidavit or declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date. Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by proof or a showing of facts" and,*

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thus, does not satisfy the requirements of 37 CFR 1.131(b). In re Borkowski, 505 F.2d 713, 184 USPQ 29 (CCPA 1974). Applicant must give a clear explanation of the exhibits pointing out exactly what facts are established and relied on by applicant. 505 F.2d at 718-19, 184 USPQ at 33. See also In re Harry, 333 F.2d 920, 142 USPQ 164 (CCPA 1964) (Affidavit "asserts that facts exist but does not tell what they are or when they occurred."). See MPEP 715.07 General Requirements

4. In order to establish conception applicant from pages 2 through 6 under the heading "Response to Rejection" mapped the limitations of claim 1 to the pertinent excerpts of (Exhibit A) to provide the evidence for the date of conception of the present invention prior to the date of the O'Rourke reference.

Upon reviewing of the limitations of claim 1 to Exhibit A it was found that not all of the limitations of claim 1 are clearly disclosed by Exhibit A. For example in the limitation "a rule engine to determine an availability of the host indicated in said rule and, if the host is available, to select the host as a forwarding destination and to cause the request processing unit to forward the request to the host according to said rule, wherein the host is determined to be available if the host responds to a connection attempt within a timeout period and, if more than one host is available as indicated by said rule, to select the host based on a delivery factor included in said rule" Exhibit A talks about forwarding rules in general but fails to disclose or indicate a rule "wherein the host is determined to be available if the host responds to a connection attempt within a timeout period and, if more than one host is available as indicated by said rule, to select the

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host based on a delivery factor included in said rule". This is not a clear explanation.

Thus applicant has not met his burden of clearly showing how the submitted evidence supports conception of the invention.

5. The examiner has reviewed the submitted evidence in its entirety and does not find that it would support conception as claimed. For example, it is not obvious to Examiner where the claimed “wherein the host is determined to be available if the host responds to a connection attempt within a timeout period and, if more than one host is available as indicated by said rule, to select the host based on a delivery factor included in said rule” is supported by the exhibit. As such it appears that Applicant has not shown a conception of invention. This is a single example and is not meant to be comprehensive and exhaustive. Applicant has the burden of establishing conception.

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II. Reduction to Practice

When alleging that conception or a reduction to practice occurred prior to the effective date of the reference, the dates in the oath or declaration may be the actual dates or, if the applicant or patent owner does not desire to disclose his or her actual dates, he or she may merely allege that the acts referred to occurred prior to a specified date.

However, the actual dates of acts relied on to establish diligence must be provided. See MPEP § 715.07(a) regarding the diligence requirement.

6. Applicant on the last paragraph of page 4 states that Exhibit B (Software Change Log) is presented in its "un-redacted form" which indicates the release date of the products that were released prior to June-26-2001 the Earliest Effective Date of the O'Rourke reference. However upon examination it was found that all the dates on Exhibit B were redacted.

7. Finally, where conception occurs prior to the date of the reference, but reduction to practice is afterward, it is not enough merely to allege that applicant or patent owner had been diligent. Ex parte Hunter, 1889 C.D. 218, 49 O.G. 733 (Comm'r Pat. 1889). Rather, applicant must show evidence of facts establishing diligence. (MPEP 715.07(a))

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-4, 6, 8-19, 21-37, 39-49, 51, 52, 57-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Rourke et al (U.S. 6,986,018 B2) and Guenther et al (6,134,588).

10. As per claims 1, 15, 20, 23, 26, 31, 32, 34, 37, 41, 42, 49 & 58 O'Rourke disclosed a network proxy caching device (col.1, lines 27-31) to operate within a defined cache hierarchy on a network, the caching device comprising: a cache to store content from an origin server on the network; an application to receive a request for content from a client via the network, and to forward the request on the network based on a set of forwarding rules in the event of a cache miss (col.5, lines 43-56); a user interface to enable a user to specify and modify the set of forwarding rules (col.2, lines 23-33 & col.2, lines 51-67); a rule encoder to encode into a uniform syntax forwarding rules specified by the user (col.2, lines 23-57); a rules database to store the encoded forwarding rules (col.4, lines 10-22); a rule evaluator to evaluate the set of forwarding rules sequentially in response to the cache miss, to identify a rule in the set of forwarding rules which applies to the request, by identifying a correspondence between a variable in the request and a variable in the rule, the rule specifying a host within the

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cache hierarchy as a forwarding destination for the request; and a rule engine to determine an availability of the host and to select the host as said forwarding destination for the request if the host is available, the rule engine further to indicate the host to the application layer if the host is available, to cause the application layer to attempt to establish a connection with the host, if more than one host is available as indicated by said rule, to select the host based on a delivery factor included in said rule (col.4, lines 23-33 & col.7, lines 24-28), such that the application layer forwards the request to the host upon successfully establishing the connection (col.8, lines 5-23, lines 51-67, col.9 & col.10, lines 1-4) wherein if the application layer is unable to forward the request according to the rule, the rule evaluator resumes evaluating the set of forwarding rules to identify another rule corresponding to the request (col.8, lines 5-23). However O'Rourke did not explicitly disclose wherein the host is determined to be available if the host responds to a connection attempt within a timeout period. In the same field of endeavor Guenthner disclosed wherein the host is available if the host responds to a connection attempt within a timeout period (col.5, lines 44-59).

It would have been obvious to one in the ordinary skill in the art the time the invention was made to have incorporated a timeout period policy as disclosed by Guenthner in the rules engine of the caching device as disclosed by O'Rourke in order to make the caching device more resilient resulting in robust connectivity with available servers providing information to the caching device.

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11. As per claims 2, 16, 40 & 51 O'Rourke-Guenthner disclosed a device as recited in claim 1, wherein the user may specify one or more of the forwarding rules to indicate a manner of forwarding the request within the forwarding hierarchy (O'Rourke, col.4, lines 10-22 & col.8, lines 5-23).

12. As per claims 3, 17, 24, 35 & 52 O'Rourke-Guenthner disclosed a device as recited in claim 2, wherein the forwarding hierarchy is a cache hierarchy (O'Rourke, col.5, lines 43-56).

13. As per claims 4, 18, 19, 25 & 36 O'Rourke-Guenthner disclosed a device as recited in claim 3, further comprising a cache to store content requestable by a client on the network, wherein the request processing unit forwards the request only in the event of a cache miss, wherein the request is a request for content on the network (O'Rourke, col.4, lines 10-22 & col.8, lines 5-23).

14. As per claims 6, 21, 27 & 28 O'Rourke-Guenthner disclosed an intermediary network node as recited in claim 26, wherein the rule evaluator identifies the rule, which applies to the request by determining that a condition in the rule is satisfied (O'Rourke, col.4, lines 10-22 & col.8, lines 5-23).

15. As per claims 39 O'Rourke-Guenthner disclosed a method as recited in claim 37, further comprising, if said attempting to establish the connection is unsuccessful:

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determining whether a second available host is indicated in the rule, and if so, attempting to establish a connection to the second available host; and forwarding the request to the second available host (O'Rourke, col.4, lines 10-22 & col.8, lines 5-23).

16. As per claims 8, 33, 29 & 53 O'Rourke-Guenthner disclosed a device as recited in claim 1, wherein said rule comprises a plurality of destinations, and wherein the rule engine selects a destination from among the plurality of destinations as a forwarding destination for the request, based on the delivery factor included in the rule (O'Rourke, col.4, lines 10-22, col.7, lines 24-28 & col.8, lines 5-23).

17. As per claim 9 O'Rourke-Guenthner disclosed a device as recited in claim 1, wherein the at least one delivery factor comprises a specified distribution method for the request (O'Rourke, col.4, lines 10-22 & col.8, lines 5-23).

18. As per claim 10 O'Rourke-Guenthner disclosed a device as recited in claim 1, wherein the at least one delivery factor comprises an indication of a current load on at least one of the destinations (O'Rourke, col.423-33).

19. As per claim 11 O'Rourke-Guenthner disclosed a device as recited in claim 1, wherein the at least one delivery factor comprises a weighting of the plurality of destinations indicating a preferred distribution of forwarding requests between the plurality of destinations (O'Rourke, col.4, lines 10-22 & col.8, lines 5-23).

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20. As per claims 12, 13, 14, 16, 22, 30 & 43 O'Rourke-Guenthner disclosed a device as recited in claim 49, wherein the user interface is further to enable the user to modify the set of forwarding rules, to specify a sequence in which the rules of the set of forwarding rules are evaluated, to selectively enable or disable a default forwarding rule (O'Rourke, col.4, lines 10-22 & col.8, lines 5-23).

21. As per claims 44, 46, 47 & 48 O'Rourke-Guenthner disclosed a method as recited in claim 34, further comprising, prior to said forwarding the request: acquiring information about the forwarding destination, the information being indicative of a responsiveness of the forwarding destination; computing a timeout period based on the information indicative of the responsiveness of the following destination; and using the computed timeout period, in the request, in attempting to establish a connection with the forwarding destination (O'Rourke, col.4, lines 10-22 & col.8, lines 5-23).

22. As per claim 59 O'Rourke-Guenthner disclosed a device as recited in claim 1, wherein the delivery factor comprises an indication of a link bandwidth between the request processing unit and the destination processing unit (O'Rourke, col.7, lines 24-28).

23. As per claims 60-66 O'Rourke-Guenthner disclosed a network caching device as recited in claim 32, wherein the delivery factor comprises at least one of: a specified distribution method for the request; an indication of current load; a weighting indicating a

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proffered distribution of forwarding requests; or an indication of a link bandwidth

(O'Rourke, col.4, lines 23-33 & col.7, lines 24-28)

Response to Arguments

24. Applicant's arguments filed 1/28/2009 have been fully considered but they are not persuasive.

25. Applicant argued that O'Rourke fails to disclose that the destination or host should be selected based on any delivery factors. Specifically, O'Rourke does not teach what needs to be done if there is more than one available destination to which a client's request for content should be forwarded.

As to applicant's argument the O'Rourke clearly anticipates a scenario where more than one server is available. O'Rourke discloses that the forwarding policies/rules dictate which server to choose when more than servers are available.

O'Rourke on col.6, lines 59-67 discloses:

If block ~~508~~ determines that the requested content is not
60 available on the cache server, then the cache policies determine whether to download the requested content or redirect the client to a different server (block ~~516~~). If the cache policies dictate that the requested content be downloaded, then the procedure branches to block ~~514~~, where the cache
65 server downloads the current version of the requested content from the origin server. If the cache policies dictate that the client be redirected to a different server, then the pro-

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cedure branches to block 518, where the cache server redirects the client to another server having the requested content. The server to which the client is redirected may be another cache server or an origin server. After redirecting the

O'Rurke on col.7, lines 56-67 & col.8, lines 1-4 further elaborates on the examples of forwarding policies/rules (A.K.A delivery factors) which play a role in selecting a particular type of server that satisfies one of the dictated policy/rule.

Other decisions the cache policies may make include the types of content that should be cached on the cache server. For example, the cache policy may dictate that the cache server can only cache content from specific origin servers (e.g., origin servers owned by a particular company or organization). Additionally, the cache policy may state that the cache server can only cache small pieces of content (that are inexpensive to copy) or only large pieces of content. The cache policy may also limit the total amount of cached content that the cache server can store at any particular time. 65

Other cache policies determine the frequency with which the cache server checks the freshness of the content stored

on the cache server. These policies may also determine whether the cache server is required to have the latest version of the content or whether a "stale" version of the content is sufficient in particular situations.

26. Finally examiner advises the applicant to narrow the claim language by incorporating more details regarding the rule(s) and/or delivery factor(s) into the independent claims without departing from the original disclosure.

Conclusion

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
28. Scharber (U.S. 6,542,964 B1) disclosed Cost based optimization for content distribution using dynamic protocol selection and query resolution in cache server.
29. Jennings, III et al (U.S. 6,772, 225 B1) disclosed policy enabled web caching.
30. Colby et al (U.S. 6,006,264) disclosed method and system for directing a flow between a client and a server.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ASGHAR BILGRAMI whose telephone number is (571)272-3907. The examiner can normally be reached on 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tonia L.M. Dollinger can be reached on 571-272-4170. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. B./

Examiner, Art Unit 2443

/Tonia LM Dollinger/

Supervisory Patent Examiner, Art Unit 2443